IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 153 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CADILA LABORATORIES PVT. LTD.

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 153 of 1990
SERVED BY RPAD - (N) for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 04/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference at the instance of the assessee, the following questions have been referred for our opinion in respect of assessment year 1982-83:-

(i) "Whether, on the facts and circumstances of the case, the assessee was entitled to claim the cost of diesel generating set as revenue expenditure?

(ii) Whether on the facts and circumstances of the case, the provisions of sec.40 A(8) were applicable in respect of interest paid to the directors and shareholders of the company?"

2. Though served, none appears for the applicant-assessee. We have heard Mr Manish R Bhatt, learned Sr. Standing Counsel for the revenue.

3. Our attention is invited to the decision dated 30-7-2001 of this Court in the case of this very assessee raising identical questions in ITR No.61 of 1987. In the aforesaid reference also, the questions referred for the opinion of the Court were as under:-

(i) "Whether, on the facts and in the circumstances of the case, the assessee was entitled to claim the cost of a diesel generating set as revenue expenditure?

(ii) Whether on the facts and circumstances of the case, the provisions of sec.40 A(8) were applicable in respect of interest paid to the directors and shareholders of the company?"

After hearing the learned counsel for the assessee as well as the learned counsel for the revenue, this Court answered question No.1 in the negative i.e. in favour of the revenue and against the assessee. The second question also was answered in favour of the revenue and against the assessee.

4. Following the aforesaid decision dated 30-7-2001 of this Court in Income Tax Reference No.61 of 1987, we answer the first question referred to us in the negative i.e. in favour of the revenue and against the assessee.

5. As far as question No.2 is concerned, our answer is in the affirmative i.e. in favour of the revenue and against the assessee.

6. The Reference accordingly stands disposed of with

no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-